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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

BULGARIAN AMERICAN LEAGUE, COLUMBIAN LAWYERS ASSOCIATION, CONGRESS OF PORTUGESE PEOPLE, FEDERATION OF LITHUANIAN WOMEN'S CLUBS, THE JAPANESE AMERICAN ASSOCIATION OF NEW YORK, INC., YUGOSLAV CONSOLIDATED BENEVOLENT ASSOCIATION,

Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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QUESTIONS PRESENTED

Whether the Federal Communications Commission may legally nullify the statutorily protected right of members of the listening public to inform the Commission that they are aggrieved and adversely affected by a decision denying a broadcast license renewal?

Whether the Federal Communications Commission acted arbitrarily and capriciously in denying a broadcast license renewal on the basis of a stale record?

PARTIES TO THE PROCEEDING

Following is a list of all parties who appeared before the United States Court of Appeals for the District of Columbia Circuit in Case Nos. 80-1902, 80-1903, 80-1967, and 80-1968:

Cosmopolitan Broadcasting Corporation, Appellant

Federal Communications Commission, Appellee

Bulgarian American League, Appellant

Columbian Lawyers Association, Appellant

Congress of Portugese People, Appellant

Federation of Lithuanian Women's Clubs, Appellant

The Japanese American Association of New York, Inc., Appellant

Yugoslav Consolidated Benevolent Association, Appellant

Unique Radio Group, Inc., Appellant

WHCN, Inc. and WBLI, Inc., Intervenors in Support of Appellee Federal Communications Commission

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IN THE

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OCTOBER TERM, 1981

BULGARIAN AMERICAN LEAGUE, COLUMBIAN LAWYERS ASSOCIATION, CONGRESS OF PORTUGESE PEOPLE, FEDERATION OF LITHUANIAN WOMEN'S CLUBS, THE JAPANESE AMERICAN ASSOCIATION OF NEW YORK, INC., YUGOSLAV CONSOLIDATED BENEVOLENT ASSOCIATION,

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Petitioners, Bulgarian American League, Columbian Lawyers Association, Congress of Portugese People, Federation of Lithuanian Women's Clubs, The Japanese American Association of New York, Inc., and Yugoslav Consolidated Benevolent Association (hereinafter "Foreign Language Groups") request that a writ of certiorari issue to reverse the judgment of the United

States Court of Appeals for the District of Columbia Circuit entered in Case Nos. 80-1902, 80-1903, 80-1967 and 80-1968 on June 29, 1981.

OPINIONS BELOW

The original opinion of the Court of Appeals remanding the Federal Communications Commission's ("Commission") denial of the renewal of Cosmopolitan Broadcasting Corporation's radio broadcast license was rendered on May 31, 1978. *Cosmopolitan Broadcasting Corporation v. FCC,* 189 U.S. App. D.C. 139, 581 F.2d 917 (1978), Cosmopolitan Appendix B. The judgment of the Court of Appeals affirming the Commission's Supplemental Decision issued upon remand was entered on June 29, 1981 without an opinion. *Cosmopolitan Broadcasting Corporation v. FCC,* Nos. 80-1902 *et al.* (D.C. Cir., filed June 29, 1981), Cosmopolitan Appendix A.

The Initial Decision of the Administrative Law Judge, FCC 74D-41 (1974), is neither officially nor unofficially reported, Cosmopolitan Appendix C. The Commission Decision affirming the Administrative Law Judge is reported at 59 F.C.C.2d 558, 37 R.R.2d 569 (1976), Cosmopolitan Appendix D. The *Memorandum Opinion and Order* of the Commission denying reconsideration of the 1976 Decision is reported at 61 F.C.C.2d 257, 38 R.R.2d 368 (1976), Cosmopolitan Appendix E. The Commission's *Memorandum Opinion and Order* denying Cosmopolitan's Petition for Distress Sale Relief is reported unofficially at 46 R.R.2d 1255 (1980). The Commission's Supplemental Decision issued upon remand from the Court of Appeals is reported at 75 F.C.C.2d 423, 46 R.R.2d 1285 (1980), Cosmopolitan Appendix F. The Commission's *Memorandum Opinion and Order*

denying reconsideration of the Supplemental Decision and the denial of the Petition for Distress Sale Relief is reported at 79 F.C.C.2d 16, 47 R.R.2d 1325 (1980), Cosmopolitan Appendix G.

JURISDICTION

The judgment of the Court of Appeals was filed and entered on June 29, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS AND REGULATIONS

Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405 and Section 1.106(b)(1) of the Rules and Regulations of the Federal Communications Commission, 47 C.F.R. § 1.106(b)(1) are set forth in full at Appendix 1.

STATEMENT OF THE CASE

The Foreign Language Groups are organizations and associations which represent various foreign language and ethnic minorities served by Station WHBI who will be most affected by the denial of WHBI's license renewal, and the station's listeners generally. The Petitioners are devoted to giving positive direction to their ethnic communities to the end that they are and shall be constructive elements of society, and all are interrelated with other groups of similar ethnic origin affecting cultural, civic, political, religious, benevolent, artistic, athletic and other aspects of individual and societal behavior.

A broadcast station must renew its license every three years. Cosmopolitan Broadcasting Corporation, licensee of Radio Station WHBI, Newark, New Jersey, applied

for renewal of its license on February 26, 1969. At the time the renewal application was filed, WHBI devoted 114 hours per week (68% of its air time) to ethnic programming broadcast in 18 foreign languages.[1] By 1972 WHBI was broadcasting ethnic programming in English and 25 foreign languages directed to at least 28 distinct ethnic groups.[2]

In 1972 the Commission designated Cosmopolitan's renewal application for hearing. On July 25, 1974, the Administrative Law Judge ("ALJ") released his Initial Decision, denying Cosmopolitan's renewal application. The Commission affirmed the ALJ's decision[3] and denied Cosmopolitan's petition for reconsideration.[4] Cosmopolitan appealed the Commission's decision to the Court of Appeals for the District of Columbia Circuit. Petitioner Columbian Lawyers Association also filed an appeal. Petitioners Bulgarian American League, Yugoslav Benevolent Association, Congress of Portugese People, The Japanese American Association of New York and

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[1]In 1969 WHBI broadcast in the following languages: Spanish (45.5 hours); Italian (35.5 hours); Greek (10 hours); Hungarian (4 hours); Arabic (2.5 hours); Polish (2.75 hours); Brazilian (2.05 hours); Portugese (2 hours); Lithuanian (1 hour); Slovakian (55 minutes); Croatian (0.5 hours); Albanian (0.5 hours); Ukranian (0.5 hours); Roumanian (0.5 hours); Armenian (0.5 hours); Yugoslavian (0.5 hours); Bulgarian (0.5 hours); Norwegian (0.5 hours). *Cosmopolitan Broadcasting v. FCC*, 189 U.S. App. D.C. at 141, 581 F.2d at 919.

[2]In 1972 WHBI was also offering programs in Korean, Macedonian, Urdu, Hindi, Bengali, Japanese and Russian. *Cosmopolitan Broadcasting v. FCC*, 189 U.S. App. D.C. at 141, 581 F.2d at 919, WHBI Exhibit 6.

[3]*Cosmopolitan Broadcasting Corp.*, 59 F.C.C.2d 558, 37 R.R.2d 569 (1976).

[4]*Cosmopolitan Broadcasting Corp.*, 61 F.C.C.2d 257, 38 R.R.2d 368 (1976).

the Federation of Lithuanian Women's Clubs intervened in the appeal on behalf of Cosmopolitan. The Foreign Language Groups argued that the Commission erred in failing to give due consideration to the importance of WHBI's programming to its ethnic audiences and that denial of WHBI's license would adversely affect the groups which they represented by depriving them of an important source of programming in their native languages.

The Court of Appeals remanded the case to the Commission with instructions to determine whether Cosmopolitan's programming was sufficiently meritorious to mitigate the licensee's transgressions which resulted in the denial of its license renewal. The Court reminded the Commission that the ultimate question to be resolved was whether a renewal of Cosmopolitan's license would serve the public interest, convenience and necessity. Accordingly, the meritorious programming determination had to include a consideration of whether denying Cosmopolitan's renewal application would silence a unique outlet serving a specialized audience that would feel its loss.[5]

On December 19, 1979, the Commission adopted its Supplemental Decision[6] reaffirming its conclusion that renewal of WHBI's license would not be in the public interest. The Commission took this action without holding further hearings or taking further evidence on the meritorious programming issue and without soliciting the views of the Foreign Language Groups who had

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[5] *Cosmopolitan Broadcasting Corp. v. FCC*, 189 U.S. App. D.C. 138, 581 F.2d 917 (1978).

[6] *Cosmopolitan Broadcasting Corp.*, 75 F.C.C.2d 423, 46 R.R.2d 1285 (1980).

participated in the earlier court appeal regarding the meaning of the Court's mandate or the steps which the Commission should take to comply with the mandate. The Foreign Language Groups petitioned for reconsideration, urging the Commission to grant WHBI's renewal or to hold a new hearing so that they might proffer evidence on the value of WHBI's ethnic broadcasting to the audience being served. The Commission dismissed the petition for reconsideration as an "unauthorized pleading" because the Foreign Language Groups had "not requested leave to intervene."[7] The Court of Appeals affirmed the Commission's Decision without an opinion.[8]

REASONS FOR GRANTING THE WRIT

I.

THE COMMISSION HAS DENIED THE FOREIGN LANGUAGE GROUPS THEIR RIGHT TO ADMINISTRATIVE DUE PROCESS GUARANTEED BY SECTION 405 OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED, AND SECTION 1.106(b) OF THE COMMISSION'S OWN RULES.

Section 405 of the Communications Act, 47 U.S.C. § 405, provides in pertinent part:

> After an order, decision, report or action has been made or taken in any proceeding by the Commission . . . any party thereto, or *any other person aggrieved or whose interests are adversely affected thereby*, may petition for rehearing . . . to the

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[7] *Cosmopolitan Broadcasting Corp.*, 79 F.C.C.2d at 20 and 23, 47 R.R.2d at 1328 and 1330 (1980).

[8] *Cosmopolitan Broadcasting Corp. v. FCC*, Nos. 80-1902 *et al.* (D.C. Cir., filed June 29, 1981).

authority making or taking the order, decision, report or action. [Emphasis supplied.]

Similarly, Section 1.106(b)(1) of the Commission's Rules, 47 C.F.R. § 1.106(b)(1) provides that:

> [A]ny party to the proceeding, *or any other person whose interests are adversely affected* by any action taken by the Commission . . . may file a petition requesting reconsideration of the action taken. [Emphasis supplied.]

As noted earlier, the Commission dismissed the Foreign Language Groups' petition for reconsideration as an unauthorized pleading. The Foreign Language Groups are representative of the specialized audience in the New York-New Jersey area served by WHBI's unique ethnic programming format. The denial of WHBI's renewal will silence this unique outlet and the specialized audience will feel its loss severely.[9]

As representative members of WHBI's listening audience, the Foreign Language Groups are entitled to consideration before the Commission.[10] There are more than two million ethnics in WHBI's service area. It cannot be disputed that they will be aggrieved by the loss of WHBI's broadcasts in their native languages. Moreover, the interests which will be adversely affected by the silencing of such a unique outlet are not merely private economic interests, but the interests of the listening public in a diversity of broadcast entertainment formats. "It is surely in the public interest, as that was conceived by a Congress representative of all the people,

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[9] *Citizens Committee to Save WEFM v. FCC*, 165 U.S. App. D.C. 185, 506 F.2d 246 (1974).

[10] *Joseph v. FCC*, 131 U.S. App. D.C. 207, 404 F.2d 207 (1968).

for all major aspects of contemporary culture to be accommodated by the commonly owned resources wherever that is technically and economically feasible."[11]

The Commission ostensibly dismissed the Foreign Language Groups' petition for reconsideration because they had not sought leave to intervene. Yet, there is no requirement either in the statute or in the Commission's Rules that a person seek leave to intervene prior to filing a petition for reconsideration. To the contrary, had the Foreign Language Groups intervened before the Commission, they would have acquired party status.[12] Section 405 of the Statute and Section 1.106(b) of the Commission's Rules, however, unquestionably confer a *right* on both parties and *aggrieved nonparties* to consideration and determination of a petition for reconsideration. The Commission was absolutely without power to refuse to entertain the petition submitted by the Foreign Language Groups.[13]

The Commission is charged by Congress to grant those broadcast applications which will serve the public interest, convenience and necessity.[14] In *Office of Communications of the United Church of Christ v. FCC*, 123 U.S. App. D.C. 328, 359 F.2d 994 (1966), the Court maintained that the fact that the Commission itself is charged by Congress to protect the public interest is no

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[11] *Citizens Committee of Atlanta v. FCC*, 141 U.S. App. D.C. 109, 115, 436 F.2d 263, 269 (1970).

[12] 47 U.S.C. § 309(c).

[13] *Southland Industries v. FCC*, 69 U.S. App. D.C. 82, 99 F.2d 117 (1938); *Black River Valley v. McNinch*, 69 U.S. App. D.C. 311, 101 F.2d 235 (1938), *cert. denied*, 307 U.S. 623 (1939).

[14] 47 U.S.C. § 309.

reason to preclude the listening public from assisting in that task. Furthermore, according to the Court, the Commission has always viewed its regulatory duties as guided, if not limited, by our national tradition that public response is the most reliable test of performance in broadcasting. An important question of federal law is thus presented by the Commission's refusal to entertain the views of the Foreign Language Groups on the denial of the WHBI license renewal: Whether the Commission may legally annul the statutorily protected right of members of the listening public to inform the Commission that they are aggrieved and adversely affected by the denial of a broadcast license renewal?

The Foreign Language Groups submit that the Commission's action defeats the purpose of Section 405 of the Communications Act, is arbitrary and capricious and denies them their due process right to be heard. Whether or not the Commission ultimately grants the Foreign Language Groups' petition, it is at the very least obligated to consider their comments on how the death penalty imposed on WHBI will affect the ethnic communities to which its programming is directed. The Commission's dismissal of the Foreign Language Groups' petition for reconsideration in derogation of the Communications Act creates a dangerous precedent. If allowed to stand, the Commission will have succeeded in silencing not only WHBI but also the voice of the listening public.

The Court of Appeals affirmed the Commission's action without opinion. The correction of errors of law by a court of appeals on review of administrative agencies is committed to this Court through its certiorari jurisdic-

tion.[15] This case must be remanded to the court below for correction of its error of law.

II.

THE DENIAL OF WHBI'S RENEWAL OF LICENSE ON THE BASIS OF A STALE RECORD IS ARBITRARY AND CAPRICIOUS.

The Court of Appeals originally remanded this case to the Commission to determine whether WHBI's programming was sufficiently meritorious to warrant renewal despite the licensee's transgressions. The Court held as a matter of law that where there is a likelihood that a license may not be renewed, determination of the meritoriousness of programming must include consideration of the uniqueness of the programming to a significant segment of the public.[16]

On remand the Commission did not update the record on WHBI's performance over the equivalent of almost four license periods to evaluate the uniqueness of its service and the impact on the public of its termination, but rather held that WHBI's programming from 1966 to 1969 was not sufficiently meritorious to mitigate the licensee's transgressions during that same period. The record in this case is so stale that it cannot possibly support a decision either for grant or denial of WHBI's renewal application.[17]

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[15] *Federal Communications Commission v. Allentown Broadcasting Corp.*, 349 U.S. 358 (1955).

[16] *Cosmopolitan Broadcasting Corp. v. FCC*, 189 U.S. App. D.C. at 150-154, 518 F.2d at 928-932.

[17] *Charles W. Jobbins*, 68 F.C.C.2d 46, 42 R.R.2d 1580 (1978).

If the public interest is to be served, the record must be reopened and updated. The Commission's action in deciding this case on a record almost twelve years old is the very essence of arbitrary and capricious conduct.[18] The Commission must determine whether a renewal of WHBI's license will serve the public interest, convenience and necessity *as of the time the renewal will be granted.*[19] To fail to evaluate the merit or uniqueness of WHBI's program service actively broadcast during the past twelve years since its renewal application was filed is to render the denial of the renewal a matter of punishment rather than a determination of where lies the public interest.

Many questions are raised by the passage of time. In its Supplemental Decision, the Commission failed to consider the effects on the disqualifying issues designated against WHBI of the deregulation of radio and the new Policy Statement on Time Brokerage Arrangements, both of which were pending at the Commission while this case was under consideration.

The Commission stated in Paragraph 6 of its Supplemental Decision that the meritorious programming issue was framed,

> "to determine whether the programming of Station WHBI(FM) has been meritorious, particularly with

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[18] *Ford Motor Co. v. NLRB*, 305 U.S. 364 (1938); *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134 (1940); *Fly v. Heitmeyer*, 309 U.S. 146 (1940).

[19] *Easton Publishing Co. v. FCC*, 87 U.S. App. D.C. 344, 185 F.2d 987 (1950). "The Court's remand must, in view of the reasoning of the Supreme Court, be read in the light of the Commission's duty to award applications for construction permits in satisfaction of public interest, convenience or necessity at the *time of the award.*" (Emphasis supplied.) 185 F.2d at 991.

> regard to public service programs" . . . . This emphasis explains why the absence of program log evidence was and remains a serious deficiency in Cosmopolitan's showing.

In the *Report and Order in the Matter of Deregulation of Radio,* 84 F.C.C.2d 968, 49 R.R.2d 1, adopted January 24, 1981, the Commission eliminated the requirement that broadcasters maintain program logs. In so doing the Commission stated:

> As the record in this case reveals, our past program logging requirement has served primarily as an index to the *quantity* of nonentertainment and commercial programming aired by individual licensees, and has been of very little value as an index of performance in the more general programming areas. The Commission has never imposed a requirement that stations supply extensive textual data on the *content* of their programming, and doing so would raise significant First Amendment questions. Our experience also has shown that such information is not necessary to meet our public interest oversight and other statutory responsibilities. [Emphasis in original.]

84 F.C.C.2d at 1010, 49 R.R.2d at 32.

The Commission's holding that WHBI's meritorious programming showing was seriously deficient as a result of the absence of program log evidence is clearly arbitrary and capricious in light of its concurrent deliberations[20] leading to the elimination of the log keeping rules as not required by the public interest, not indicative of general

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[20]The Notice of Proposed Inquiry in the deregulation proceeding was adopted on September 6, 1979. 73 F.C.C.2d 457, 46 R.R.2d 237.

broadcasting performance and not reflective of program content.

In addition to abolishing the program log keeping requirement, the Commission, acting in the public interest, eliminated its processing guidelines relative to the amounts of nonentertainment programs which commercial stations should provide, the rules and policies dealing with the maximum amount of commercial minutes per hour which a licensee may broadcast, and the requirement that licensees adhere to detailed ascertainment procedures.[21] Certainly, the Commission should have articulated the effect of these changes on the public interest issue of WHBI's renewal as it relates to the silencing of a unique outlet.

On November 18, 1980, the Commission issued a new *Policy Statement on Time Brokerage Arrangements.*[22] This Policy Statement was not adequately taken into consideration in deciding that WHBI's renewal would not be in the public interest. Instead, the Commission attempted to grandfather the denial of WHBI's renewal as an exception to the new policy on the basis of the licensee's abdication of program control.[23] This appears to be a shallow effort to avoid a resolution of the basic issue upon an updated determination of whether the cumulative minor indiscretions of WHBI are overcome by the uniqueness of its program service. The Commission seeks to destroy this service in direct contravention of the intent and spirit of its new Policy Statement in which

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[21] 84 F.C.C.2d at 977-983, 993-99, 1000-1008, 49 R.R.2d at 9-14, 20-24, 25-31.

[22] 82 F.C.C.2d 107, 48 R.R.2d 763.

[23] 82 F.C.C.2d at 109, 48 R.R.2d at 765.

it discusses the merits of time brokerage arrangements as a means of encouraging the broadcast of foreign language programs:

> The growth of television and the increase in the number of radio stations over time has yielded an environment where, for most radio stations, the preferred strategy is to seek specialized audiences rather than mass audiences. There are, nonetheless, some specialized audiences whose tastes continue to go unmet because they are too small to support an entire weekly schedule of such programming. This is frequently the case for foreign language audiences, whose preferred programming is unlikely to attract a sizeable cross-over audience. Greater flexibility in time brokerage arrangements could encourage more programming responsive to these specialized audiences.

82 F.C.C.2d at 120, 48 R.R.2d at 765.

If the public interest demands that foreign language programming be fostered, surely the public interest is disserved by the Commission's termination of the most linquistically diverse foreign language radio service in the United States on the basis of a twelve year old record without consideration of the impact of that termination on the willingness of present day broadcasters to carry ethnic programming. In an affidavit submitted with the Foreign Language Groups' petition for reconsideration, Theodore C. Grame, author of a comprehensive study of ethnic broadcasting completed under contract with the American Folklife Center of the Library of Congress, stated:

> It is in fact, almost impossible for an ethnic broadcaster whose station has cancelled his contract to operate elsewhere, in these days of increasing change to automated and format broadcasting.

Broadcaster after broadcaster, in all sections of the country, told me that his main difficulty was finding a station to carry his program—and this is especially true in New York. Moreover, when a station like WHBI ceases operations, those few station operators who might be willing to carry ethnic broadcasting stiffen their rates very considerably, squeezing the ethnic, his public, and his advertisers out of the radio medium. It is naive to suppose otherwise.

CONCLUSION

The Commission has abrogated the Foreign Language Groups' statutory right to petition for reconsideration of a decision by which they were aggrieved and adversely affected. In so doing, the Commission turned a deaf ear to the views of the listening public on the ultimate question of whether renewal of WHBI's license at the present time would serve the public interest, convenience and necessity and instead decided the case on the basis of a record almost twelve years old. By failing to consider the effect of changes in Commission policy which are directly related to the disqualifying issues designated against WHBI and the effect of the termination of WHBI's unique broadcasting service on the ethnic minorities the station serves, the Commission has acted arbitrarily and capriciously.

This situation is unsettling to all members of the listening public for whose benefit the Commission is charged to regulate broadcasting. For the reasons set forth above, it is respectfully requested that this petition for writ of certiorari be granted to correct the errors of law made by the Commission and the Court of Appeals.

Respectfully submitted,

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September 28, 1981

APPENDIX

APPENDIX

§ 405. Petition for rehearing; procedure; disposition; time of filing; additional evidence

After an order, decision, report, or action has been made or taken in any proceeding by the Commission, or by any designated authority within the Commission pursuant to a delegation under section 155(d)(1) of this title, any party thereto, or any other person aggrieved or whose interests are adversely affected thereby, may petition for rehearing only to the authority making or taking the order, decision, report, or action; and it shall be lawful for such authority, whether it be the Commission or other authority designated under section 155(d)(1) of this title, in its discretion, to grant such a rehearing if sufficient reason therefor be made to appear. A petition for rehearing must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of. No such application shall excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. The filing of a petition for rehearing shall not be a condition precedent to judicial review of any such order, decision, report, or action, except where the party seeking such review (1) was not a party to the proceedings resulting in such order, decision, report, or action, or (2) relies on questions of fact or law upon which the Commission, or designated authority within the Commission, has been afforded no opportunity to pass. The Commission, or designated

authority within the Commission, shall enter an order, with a concise statement of the reasons therefor, denying a petition for rehearing or granting such petition, in whole or in part, and ordering such further proceedings as may be appropriate: *Provided*, That in any case where such petition relates to an instrument of authorization granted without a hearing, the Commission, or designated authority within the Commission, shall take such action within ninety days of the filing of such petition. Rehearings shall be governed by such general rules as the Commission may establish, except that no evidence other than newly discovered evidence, evidence which has become avavilable only since the original taking of evidence, or evidence which the Commission or designated authority within the Commission believes should have been taken in the original proceeding shall be taken on any rehearing. The time within which a petition for review must be filed in a proceeding to which section 402(a) of this title applies, or within which an appeal must be taken under section 402(b) of this title in any case, shall be computed from the date upon which public notice is given of orders disposing of all petitions for rehearing filed with the Commission in such proceeding or case, but any order, decision, report, or action made or taken after such rehearing reversing, changing, or modifying the original order shall be subject to the same provisions with respect to rehearing as an original order. June 19, 1934, c. 652, Title IV, § 405, 48 Stat. 1095; July 16, 1952, c. 879, § 15, 66 Stat. 720; Sept. 13, 1960, Pub.L. 86-752, § 4(c), 74 Stat. 892; Aug. 31, 1961, Pub.L. 87-192, § 3, 75 Stat. 421.

47 C.F.R. § 1.106(b)

[Who May File]

(b) (1) Subject to the limitations set forth in subsection (b)(2) of this section, any party to the proceeding, or any other person whose interests are adversely affected by any action taken by the Commission or by the designated authority, may file a petition requesting reconsideration of the action taken. If the petition is filed by a person who is not a party to the proceeding, it shall state with particularity the manner in which the person's interests are adversely affected by the action taken, and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding.

(2) Where the Commission has denied an application for review, a petition for reconsideration will be entertained only if one or more of the following circumstances is present:

(i) The petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or

(ii) The petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity.

(3) A petition for reconsideration of an order denying an application for review which fails to rely on new facts or changed circumstances may be dismissed by the staff as repetitious.